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February 27, 2004

VIA HAND DELIVERY

Honorable Deborah Taylor Tate, Chairman
c/o Sharla Dillon
Dockets Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

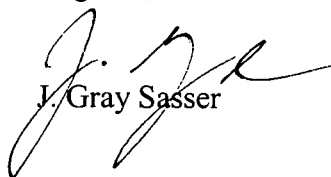
Re: General Docket Addressing Rural Universal Service -
Docket No. 00-00523

Dear Ms Dillon:

Enclosed please find an original and fourteen copies of the CMRS Carriers Joint Comments Relating To February 17, 2004 Status Conference. Copies of the enclosed are being provided to the counsel of record.

If you have any questions about the attached, please do not hesitate to give me a call

Regards,


J. Gray Sasser

JGS/ktr
enc.

cc. Clay Phillips, Miller & Martin LLP

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of:

**GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE**

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Docket No. 00-00523

T.R.A. DOCKET ROOM

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**CMRS CARRIERS' JOINT COMMENTS
RELATING TO FEBRUARY 17, 2004 STATUS CONFERENCE**

Cellco Partnership, doing business as Verizon Wireless ("Verizon Wireless"),
Chattanooga MSA Limited Partnership, BellSouth Personal Communications, LLC and
BellSouth Mobility LLC, doing business as Cingular Wireless ("Cingular"), AT&T Wireless
PCS, LLC, doing business as AT&T wireless ("AT&T Wireless"), PowerTel Kentucky, Inc.,
PowerTel Memphis, Inc , PowerTel Birmingham, Inc , PowerTel Atlanta, Inc , doing business as
T-Mobile ("T-Mobile"), and Sprint Spectrum, L P , doing business as Sprint PCS ("Sprint"),
(collectively "the CMRS Carriers") hereby submit these joint comments in the above captioned
Universal Service Docket ("USD 00-00523")

INTRODUCTION

On February 17, 2004, Director Ron Jones, acting as Hearing Officer of the Tennessee
Regulatory Authority ("TRA"), held a Status Conference to discuss the current state of USD 00-
00523 and its future progress. During the Conference, Director Jones invited the Parties to file
briefs on BellSouth Telecommunication, Inc 's ("BellSouth") pending Motion for
Reconsideration¹, the Tennessee Rural Independent Coalition ("Coalition") Petition for

¹ *BellSouth Telecommunications Inc 's Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and*

Emergency Relief and Request for Standstill Order ("Petition"), and any additional outstanding issues concerning this docket.

BellSouth's Motion pertains to matters involving termination of a pre-existing Primary Carrier Plan ("PCP") contract between BellSouth and the Coalition. The CMRS Carriers are not a party to the PCP, nor is any traffic exchanged by the CMRS Carriers pursuant to the terms of such contract. The Coalition's Petition, however, contends that traffic identified as CMRS originated traffic (i.e. "Meet Point billed traffic") is subject to the PCP and, therefore, seeks to require BellSouth to pay for such traffic as if it were intraLATA toll traffic subject to access charges.

The CMRS Carriers urge the TRA to reject the Coalition's Petition in USD 00-00523 and permit the outstanding compensation issues regarding CMRS Meet Point Billed traffic to be resolved in the consolidated interconnection arbitrations now pending between the CMRS Carriers and the Coalition². If BellSouth is required to make access payments to the Coalition, the Coalition will have no incentive to establish appropriate reciprocal compensation arrangements with the CMRS Carriers. Likewise, the CMRS Carriers urge the TRA to reject any Coalition suggestion that a three-way resolution is required between BellSouth, the Coalition and the CMRS Carriers, or permissible under Section 252(b) of the Telecommunications Act of 1996.

Recommendation of the Pre-Hearing Office Filed on November 8, 2000 filed July 15, 2002, and "substitute version" filed July 25, 2002 (collectively "BellSouth's Motion")

² *Petition For Arbitration Of Celco Partnership, d/b/a Verizon Wireless* filed November 6, 2003, Docket 03-00585, *Petition For Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership. Collectively d/b/a Cingular Wireless* filed November 6, 2003, Docket 03-00586, *Petition For Arbitration Of AT&T Wireless PCS, LLC D/B/A AT&T Wireless* filed November 6, 2003, Docket 03-00587, *Petition For Arbitration Of T-Mobile USA, Inc.* filed November 6, 2003, Docket 03-00588, and, *Petition For Arbitration Of Sprint Spectrum L.P. d/b/a Sprint PCS* filed November 6, 2003, Docket 03-00589, as consolidated in Docket 03-00585 ("CD 03-00585")

("the Act"). The dispute between the Coalition and the CMRS Carriers involves the compensation arrangements between these two parties and no one else. These issues have been squarely presented to the TRA in Docket 03-00585 and should be addressed in that context.

OUTSTANDING ISSUES

The CMRS Carriers intervened in this proceeding in part to challenge the Coalition practice of assessing access charges on CMRS traffic subject to the reciprocal compensation obligations established by the Act and the rules of the FCC. The CMRS Carriers agreed with BellSouth that the traffic exchanged between wireless carriers and the Coalition members was not subject to access charges and is not subject to the PCP.³ The CMRS Carriers argued that the Coalition members should negotiate directly with the wireless carriers to establish reciprocal compensation arrangements as provided for in 47 U.S.C. §251(b)(5) and that the Coalition not be permitted to use the PCP to avoid these statutory obligations.

In response to this argument, the Hearing Officer (acting as a Pre-Hearing Officer in USD 00-00523) issued an Order requiring that the CMRS Carriers be notified "of the opportunity to participate in collective negotiations with the Coalition." Pursuant to this order, the CMRS Carriers issued a *bona fide* request to the Coalition members to begin interconnection and reciprocal compensation negotiations under Section 252(b) of the Act. The CMRS Carriers and Coalition members engaged in negotiations throughout the 135-day statutory negotiation time period, but no negotiated agreement was reached. Each CMRS Carrier timely filed its

³ As stated by the FCC "We reiterate that traffic between and incumbent LEC and a CMRS network that originates and terminates within the same MTA (based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (August 8, 1996), ¶1043.

respective Petition for Arbitration, all of which are now pending in CD 03-00585. Accordingly, the substantive dispute between the CMRS Carriers and the Coalition has been squarely presented to the TRA in CD 03-00585 and those disputes should be resolved in that docket.

I. THE TRA SHOULD DENY THE COALITION'S PETITION TO THE EXTENT IT SEEKS TO HAVE BELL SOUTH PAY COALITION MEMBERS FOR CMRS MEET POINT BILLED TRAFFIC

There is no basis for BellSouth to make payments to Coalition members for termination of CMRS originated Meet Point billed traffic. The ultimate compensation to be paid for all intraMTA traffic exchanged between a CMRS Carrier network and a Coalition member network (which will by definition include CMRS originated Meet Point billed traffic), is an interconnection issue between the CMRS Carriers and Coalition members that is subject to resolution in CD 03-00585. CMRS originated Meet Point billed traffic is not subject to the PCP and any payments by BellSouth to Coalition members for such traffic undermines the 251-252 process in CD 03-00585. Ordering BellSouth to make payments to the Coalition at access rates under the PCP will only serve to alter the bargaining position of the negotiating/arbitrating Parties by eliminating any incentive for the Coalition to quickly reach an agreement with the CMRS Carriers.

When the TRA invited the CMRS Carriers to participate in negotiations consistent with the 251-252 process in its May 5, 2003 Order, the CMRS Carriers made an interim compensation offer as contemplated by the statutory process. The intent of that offer was to address a presumed desire that Coalition members would want to receive compensation for CMRS Meet Point billed traffic until a final interconnection agreement was implemented. For the benefit of

both the CMRS Carriers and the Coalition members, the offer specifically contained a “true up” provision in the event a rate ultimately adopted by the TRA was different from that in the interim agreement. The Coalition rejected the offer on the grounds the PCP was already an applicable interconnection agreement between the Parties. This response makes clear that the Coalition has no intention of establishing a “reciprocal compensation arrangement” as required by the Act, so long as it expects to receive compensation at access rates.

The CMRS Carriers submit that the TRA should affirmatively state that CMRS originated Meet Point billed traffic is not subject to the PCP and that no further payment is due from BellSouth to the Coalition for such traffic as of a specified “Stake Date”. A Stake Date should serve the further purpose of finality, with it being understood that no Party may make claims against another for additional compensation or reimbursement prior to such date. On a prospective basis from such date, CMRS Carriers and Coalition members may only seek compensation from one another for traffic originated on one of their networks and terminated on the other’s network as provided within CD 03-00585. The CMRS Carriers are agreeable to establishing a Stake Date using either the May 5, 2003 Order date, the July 30, 2003 CMRS Carrier interim compensation offer date, or a subsequent specified date on which the TRA affirmatively releases BellSouth from continuing to make any payments to Coalition members for such traffic.

II. CMRS CARRIER PARTICIPATION WILL NO LONGER BE REQUIRED IN THIS DOCKET

Upon the TRA clearly stating that CMRS originated Meet Point billed traffic is subject to resolution in CD 03-00585 and is not subject to the PCP, all of the remaining issues in USD 00-00523 pertain to the PCP contract between BellSouth and the Coalition. The CMRS Carriers are not a party to that agreement, do not exchange intraLATA traffic that is the subject of that agreement and, therefore, have no position on the PCP issues remaining in USD 00-00523

III. NO FURTHER CONSOLIDATION BETWEEN CD 03-00585 and USD 00-00523 IS WARRANTED

The CMRS Carriers anticipate the Coalition may once again contend that BellSouth, the CMRS Carriers and the Coalition must all be Parties in both CD 03-00585 and USD 00-00523 in order to reach either a “3-way resolution” or “3-way interconnection agreement”. If this tact is taken, the Coalition is further expected to cite Settlements that were entered into during 2003 between BellSouth, Rural LECs and CMRS Carriers in other states regarding CMRS originated Meet Point billed traffic as examples of “3-way interconnection agreements”

For several reasons, it is inappropriate for the TRA to follow a Coalition suggestion that would compel the Parties to reach a 3-way resolution. First, the Act establishes the process to negotiate/arbitrate bilateral agreements, not 3-way agreements. Second, the TRA has never permitted three-way arbitration over the objection of a Party, and the CMRS Carriers would object to any attempt by the Coalition to third-party BellSouth into the two-party CMRS Carriers – Coalition arbitration. Third, as evidenced by the TRA approved Verizon-TDS interconnection agreement, and other interconnections agreements filed throughout the country, an interconnection agreement containing provisions addressing the indirect exchange of traffic

between two carriers are common and do not require the intermediate tandem provider(s) to be a party to the agreement.

BellSouth, CMRS Carriers and Rural LECs did enter into 3-way Settlements during 2003 in Georgia, Mississippi and Louisiana regarding the *interim* handling of CMRS originated Meet Point billed traffic. None of these Settlements, however, are either interconnection agreements, or substitutes for interconnection agreements. To the contrary, these Settlements are specifically considered by their terms to be temporary arrangements that were intentionally crafted to provide the Rural LECs and CMRS Carriers sufficient time to engage in the same 251-252 statutory process that the Coalition and CMRS Carriers have already started in Tennessee. Each of these agreements contemplates initiation and completion of the 251-252 process by the end of this year, 2004 or mid 2005. Towards this end, a number of wireless carriers recently sent *bona fide* requests to Georgia independent telephone companies asking to commence negotiations for an interconnection agreement pursuant to Section 251(c)(1) and 252 of the Act. Tennessee is simply procedurally ahead of the other states with respect to arriving at a final resolution of the underlying issue, *i.e.*, establishment of interconnection agreements between the CMRS Carriers and Coalition members for the exchange of indirect traffic between the Parties' respective networks.

CONCLUSION

With respect to USD 00-00523, the CMRS Carriers respectfully request that.

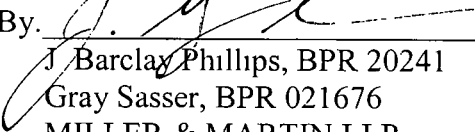
1 The Coalitions' Petition be denied to the extent it seeks to have BellSouth pay Coalition members for CMRS Meet Point billed traffic,

2. A Stake Date be established as of which no Party in USD 00-00523 may make claims against another for additional compensation or reimbursement prior to such date and, on a prospective basis from such date, CMRS Carriers and Coalition members may only seek compensation from one another for traffic originated on one of their networks and terminated on the other's network as provided within CD 03-00585.

3. If Coalition members desire to receive compensation for the termination of CMRS originated Meet Point billed traffic, they should be directed to negotiate with the CMRS Carriers within CD 03-00585 regarding an interim compensation arrangement, and,

4. No further consolidation shall occur between USD 00-00523 and CD 03-00585

Respectfully submitted on behalf of
CMRS Carriers,

By. 
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Gray Sasser, BPR 021676
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(615) 244-9270

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the parties of record, via the method indicated

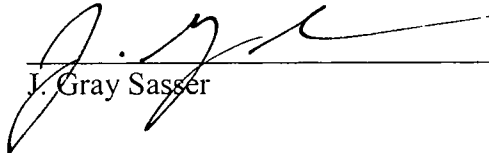
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<input type="checkbox"/>	Overnight	Redmond, WA 90852

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<input type="checkbox"/> Hand <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight	Tom Sams Cleartalk 1600 Ute Avenue Grand Junction, CO 81501

This 27th day of February, 2004



J. Gray Sasser